IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

COMPANY APPEAL NO. 15 OF 2005
IN
COMPANY LAW BOARD APPLICATION NO. 124 OF 2004
IN
COMPANY LAW BOARD PETITION NO.16 OF 2004

The Premier Automobiles Limited and Ors. ...Appellant Orig. Resp.

vs.

The Union of India ...Respondent Orig.Petitioner

Shri M.S. Ganesh with Rabindra Hazari for the petitioner.
Shri C.J. Roy, Panel Cousel i/b. Dr. T.C. Kaushik for the respondents.

CORAM: S.U. KAMDAR, J.

DATE : 24TH MARCH, 2005.

P.C. :

1. By my order dated 11.3.2005 I had directed the learned counsel appearing for the respondent Union

of India to take instructions on two issues which was formulated in the said order i.e. firstly to give inspection of the documents which are referred to and or relied upon in the petition before the company law board and secondly the issue pertaining to the satisfaction of the condition precedent under section 388(b) of the Companies Act about the formation of the opinion by the central government and the avalaibility of material in support such opinion to be considered and urged on merits before the company law board at the time of final hearing of the petition itself.

2. Pursuant thereto on 24.3.2005 the respondents have given instructions to the Regional Director, Ministry of Company Affairs inter-alia agreeing to the issue that the requirement of the condition precedent under section 388(b) can be urged and the company law board can dispose off the matter finally at the time of final hearing of the petition on merits. In so far as the issue no.1 is concerned about granting of inspection by the said letter dated 24.3.2005 it is stated that the

central government has already filed the relevant extract of the inspection report on 26.1.2005 under section 209(A) of the Companies Act. The zerox copy of the said letter dated 24.3.2005 is tendered in court and the sme is taken on record.

3. In the aforesaid circumstances in my opinion the present appeal can be disposed off by leaving the issue to be decided by the company law Board pertaining to the satisfaction of the condition precedent under section 388(b) about the formation of opinion by the central government to exercise of the power conferred therein. An issue whether there was and the necessary supporting material or not to arrive at such an opinion also to be considered and heard on merits by the company law board at thie stage of final hearing of the petition.

3. In so far as the impugned order is concerned it is clarified that the said order will be taken into consideration by the company law board while passing the final order and deciding the issue on

merits between the parties at the time of final hearing of the company petition. In so far as the inspection is concerned the letter dated 24.3.2005 refers to filing of certain extract of inspection report under section 209. However it is clarified that if the petitioner wants to rely upon any documents which are referred to and or relied upon in the petition itself before the company law board then they will give inspection of the said documents. The respondent will accordingly grant inspection of the said documents within a period of four weeks from today to the petitioner. The company law board is requested to dispose off the appeal itself expeditiously and in any event by 15.6.2005. The company appeal is disposed off accordingly. There shall be no order as to costs.

4. In view of the aforesaid order passed in the appeal itself nothing survives in the company application (L) no.959 of 2004 and thus the same is dismissed as infructious.

SD/-

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